

ACTION: Final rule.

SUMMARY: The Service determines the Little Kern golden trout (*Salmo aguabonita whitei*) to be a Threatened species. This action is being taken because of the threats of habitat modification and the effects of exotic trout on populations of this species, and will provide Federal protection for the species and its habitat. The Little Kern golden trout occurs only in Tulare County, Calif.

DATES: This rule becomes effective on May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 1, 1977, the Service published a proposed rulemaking in the *FEDERAL REGISTER* (42 FR 43995-43997) advising that sufficient evidence was on file to support a determination that the Little Kern golden trout was a Threatened species pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq. That proposal summarized the factors thought to be contributing to the likelihood that this fish could become Endangered within the foreseeable future, specified the prohibitions which would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Section 4(b)(1)(A) of the Act requires that the Governor of each State or Territory, within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a Threatened species or an Endangered species. A letter was sent to Governor Brown of the State of California on September 8, 1977, notifying him of the proposed rulemaking for the Little Kern golden trout. On September 8, 1977, letters were sent to interested parties notifying them of the proposal and soliciting their comments and suggestions. A press release dated September 9, 1977, invited all interested parties to submit factual reports or information which might contribute to the formulation of a final rulemaking.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the *FEDERAL REGISTER* prior to adding any species to the List of Endangered and Threatened Wild-

life and Plants. All comments received during the period September 1, 1977, through January 25, 1978, were considered.

Comments were received from the State of California, U.S. Forest Service, two national conservation groups, one local conservation group, one museum of natural history, and six citizens. The State of California supported the rulemaking as proposed. Their comments included recent information on the status and threats to the Little Kern golden trout. Additional threats which could impair restoration efforts in the future include habitat degradation resulting from: (1) stream sedimentation following uncontrolled off-road vehicle activities, improper road construction or careless logging; (2) stream pollution due to extraction and milling of minerals; (3) activities associated with recreation development in adjacent Mineral King and Jordan Peak areas; and (4) impacts from livestock. We agree that these threats could adversely impact the Little Kern golden trout, and that monitoring and enforcement of water quality and mining statutes within the Critical Habitat will be necessary if habitat is to be maintained. A status report and management plan are being prepared by the State of California.

The U.S. Forest Service supported the proposed Threatened status but suggested a minor alteration of Critical Habitat. Alteration of the Critical Habitat delineation involves the deletion of that area below the natural barrier falls located approximately one mile below the mouth of Meadow Creek. The Little Kern River below the barrier falls is inhabited by rainbow trout or rainbow trout x Little Kern golden trout hybrids and would not support pure populations of Little Kern golden trout. This area has been deleted from the Critical Habitat. The Forest Service also recommended that reference to the loss or destruction of habitat due to forestry practices be deleted since it was not supported by facts. They did agree, however, that uncontrolled or poorly planned logging is detrimental to water quality and fish habitat. The final rulemaking has been reworded to indicate these activities as a potential threat.

Two national and one local conservation organizations responded and indicated their support of the proposal. They also mentioned potential threats to the Little Kern golden trout and its habitat. These include overgrazing, off-road vehicles, heavy angler and recreational use and mining. They also supported efforts to restore genetically pure Little Kern golden trout in the Little Kern drainage.

One museum of natural history responded indicating their support and endorsement of the proposed Threatened status and Critical Habitat of the

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Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Listing of the Little Kern Golden Trout as a Threatened Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

Little Kern golden trout. Six citizens submitted comments supporting the proposal.

CONCLUSION

After a thorough review and consideration of all the information available, the Director has determined that the Little Kern golden trout is threatened with becoming Endangered throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act. These factors, and their relationship to the Little Kern golden trout, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*—The Little Kern golden trout is known only from the Little Kern River in Tulare County, Calif. In the Little Kern River watershed, the water quality of the streams inhabited by this fish is generally good. However, uncontrolled use of ORV's, improper road construction, careless logging activities, pollution from mining operations or overgrazing in a large portion of the drainage basin could result in an alteration of existing water quality by increasing temperature and siltation which would seriously threaten the survival of the Little Kern golden trout.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*—Not applicable.

3. *Disease or predation.*—Not applicable.

4. *The inadequacy of existing regulatory mechanisms.*—Not applicable.

5. *Other natural or manmade factors affecting its continued existence.*—Rainbow trout were introduced into the Little Kern River System in the 1930's. Subsequent hybridization between the Little Kern golden trout and the introduced rainbow trout resulted in a reduction in the number of pure populations of Little Kern golden trout. At present, pure populations of Little Kern golden trout exist only in headwater streams which were not stocked with rainbow trout or have barrier falls which have prevented upstream migration of rainbow trout.

CRITICAL HABITAT

The Director has considered all comments and data submitted in response to the proposed determination of Critical Habitat for the Little Kern golden trout (42 FR 43995-43997).

Based on this review and the criteria in 50 CFR 402.05, the Critical Habitat for the Little Kern golden trout is determined to include the following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species):

California. Tulare County. Little Kern River, main channel and all streams tribu-

tary to the Little Kern River above the barrier falls located on the Little Kern River one mile below the mouth of Trout Meadows Creek.

EFFECT OF THE RULEMAKING

Section 7 of the Act, entitled "Interagency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term "Critical Habitat" was published in 50 CFR Part 402 jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of January 4, 1978 (43 FR 870-876) and is reprinted below:

Critical habitat means any air, land, or water area (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978, FEDERAL REGISTER (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing of offspring; and generally,
- (5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

The application of these factors, based on data presently available, to

the proposed Critical Habitat of the Little Kern golden trout are discussed in the following paragraph.

The streams included in the Little Kern River watershed determined to be Critical Habitat include sufficient area for individual and population growth and dispersal of the Little Kern golden trout. The pools in stream areas within the designated area are proper habitat for aquatic insects which provide food for the trout. The cobbles and larger rocks provide cover for both juvenile and adult fish. The gravel bottom in pool areas of the Critical Habitat streams provides proper substrate for the excavation of nest. The Little Kern River is the only known habitat of the Little Kern golden trout.

The areas included in this proposal do not necessarily include the entire Critical Habitat of the Little Kern golden trout, and modifications of its Critical Habitat designations may be proposed in the future. In accordance with section 7 of the Act, all Federal departments and agencies are required to insure that actions authorized, funded, or carried out by them would not result in the destruction or adverse modification of the Critical Habitat of the Little Kern golden trout.

There may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species. This point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to section 7 of the Act are applicable in a certain area.

A Critical Habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a Critical Habitat delineation so as to cover additional habitat under section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the

biological basis of Critical Habitat delineations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up regulations which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat. Provisions for Interagency Cooperation were published on January 4, 1978, in the **FEDERAL REGISTER** (43 FR 870-876) to assist Federal agencies in complying with Section 7 of the Endangered Species Act of 1973.

EFFECT INTERNATIONALLY

In addition to the protection provided by the Act, the Service will

review the Little Kern golden trout to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate Appendix(ices) to that Convention or whether it should be considered under other, appropriate international agreements.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the Little Kern golden trout. The assessment is the basis for a decision that this determination is not a major Federal action

which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. James D. Williams, Office of Endangered Species, 202-343-7814.

REGULATIONS PROMULGATION

Accordingly, § 17.11 of part 17 of chapter I of title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the Little Kern golden trout to the list, alphabetically, under "Fishes" as indicated below:

§ 17.11 Endangered and threatened wildlife.

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
<i>Fishes</i>							
Trout, Little kern golden.	<i>Salmo Aguabonita whitei.</i>	N/A	USA (California)	Entire.....	T	37	17.44(e)

2. § 17.44 is amended by adding a new paragraph (e) as follows:

§ 17.44 Special rules—fishes.

(e) Little Kern golden trout (*Salmo aguabonita whitei*).

(1) All provisions of § 17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

3. § 17.95(e) is amended by adding Critical Habitat of the Little Kern golden trout before that of the slender chub as follows:

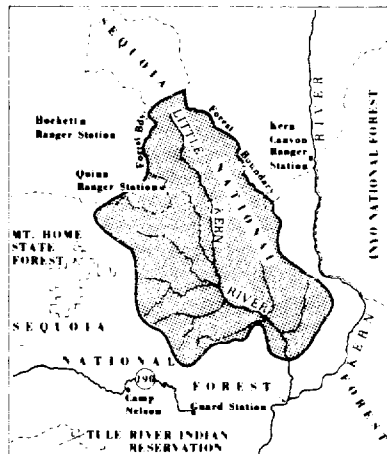
§ 17.95 Critical habitat—fish and wildlife.

(e) *Fishes*.

LITTLE KERN GOLDEN TROUT

(*Salmo aguabonita whitei*)

California, Tulare County. Little Kern River, main channel and all streams tributary to the Little Kern River above barrier falls located on the Little Kern River one mile below the mouth of Trout Meadows Creek.



Final Critical Habitat for the Little Kern golden trout

NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: April 6, 1978.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.
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